

BEFORE THE BOARD OF OIL, GAS AND MINING
DEPARTMENT OF NATURAL RESOURCES
in and for the STATE OF UTAH

IN THE MATTER OF THE APPROVAL)	FINDINGS OF FACT, CONCLUSIONS
OF THE NOTICE OF INTENT AND)	OF LAW AND ORDER
RECLAMATION PLAN SUBMITTED BY)	CAUSE NO. ACT/015/025
CO-OP MINING COMPANY.)	

This cause came on for hearing before the Board of Oil, Gas and Mining, Department of Natural Resources, State of Utah, on Wednesday, June 18, 1980, at 10:00 a.m., in the Wildlife Resources Auditorium, 1596 West North Temple, Salt Lake City, Utah.

The following Board Members were present:

Charles R. Henderson, Chairman
E. Steele McIntyre, Board Member
Thadis W. Box, Board Member

Appointed by the Board as Hearing Examiner and sitting with the Board in this matter was Cleon B. Feight.

The following staff members of the Division were present:

Denise Dragoo, Special Assistant Attorney General
James Smith, Coordinator of Mined Land Development
Ron Daniels, Deputy Director
Tom Suchoski, Reclamation Hydrologist

Appearances were made as follows:

For CO-OP Mining Company:

Mr. Carl Kingston, Attorney
Mr. Wendell Owen, Mine Manager

For Emery County:

Mr. Scott Johansen, Attorney

For Huntington City:

Mr. Scott Johansen, Attorney

For Castle Valley Special Services District:

Mr. Darrell Leemaster, Engineer

For Utah Geological and Mineral Survey:

Mr. Bruce Kaliser, Engineering Geologist

NOW THEREFORE, the Board having considered the testimony and the exhibits presented in the above hearing and being fully advised in the premises, now makes and enters the following:

FINDINGS OF FACT

1. Proper notice and publication of these proceedings was given pursuant to the Utah Coal Mining and Reclamation Act, Title 40, Chapter 10, Utah Code Annotated, 1953.
2. Said hearing is held pursuant to the request of Emery County and Huntington City who are objecting to the approval of the Co-Op Mining permit for the Bear Creek Canyon Portal in Township 16 South, Range 7 East, SLBM, Emery County, Utah.
3. The appearances of Emery County in this matter is primarily to inform the Board of the fact that Co-Op Mining Company's proposed mining development presently violates an Emery County zoning ordinance. Emery County has requested that the State approval of the proposed mining operation be conditioned upon County approval of said project. Huntington City and Castle Valley Special Services District have appeared in this matter to object to the approval of the Co-Op Mining permit due to the potential for disruption to the hydrologic regime from the proposed mining operation.
4. Evidence was presented by Huntington City and Castle Valley Special Services District establishing that certain springs in the vicinity of the proposed mining operation provide a significant portion of the culinary water supply for the Castle Valley Special Services District and Huntington City. The City and the Special Services District have requested this Board to delay approval of the proposed mining operation until such time as a agreement can be reached between the operator and the public bodies concerning replacement of their water supply.
5. The Utah Geological and Mineral Survey presented testimony demonstrating the proposed mining activities pose no serious threat to the underground water courses currently feeding the springs at issue in this matter.

CONCLUSIONS OF LAW

1. With respect to the request of Emery County, the Board prefers to proceed with approval of the proposed mining and reclamation plan independently of the actions taken by Emery County. Section 610-8-22, Utah Code Annotated, 1953, concerning State-local cooperation has not been adopted in the Utah Coal Mining and Reclamation Act, Chapter 10 of Title 40, Utah Code Annotated, 1953 (See UMC and SMC Rule 900 and (a)(xxii)). However, the Division of Oil, Gas and Mining does have a policy to cooperate with local governmental bodies to further the purposes of the mining laws which it administers. Section 40-8-17, Utah Code Annotated, 1953, has been adopted into Chapter 10 of Title 40, Utah Code Annotated, 1953, and requires that an approved notice of intent to mine does not relieve the operator of the responsibility of complying with all other applicable statutes and ordinances. Neither Section 40-8-17 UCA, 1953, nor the Board's policy of cooperation with local government requires the Board to condition approval of a notice of intent to mine upon compliance with county ordinances which are not expressly within the cognizance of the mining statutes which it administers.

2. With respect to the objections of Huntington City and the Castle Valley Special Services District, the Board must determine that no material damage to the hydrologic balance will be caused by the mining operation proposed. (See Section 40-10-11(2) and 40-10-18(2)1, Utah Code Annotated, 1953). The jurisdiction of the Board with respect to the replacement of water rights was recently invalidated by the decision of Judge Flannery in the case In RE Permanent Surface Mining Regulation Civil Action No. 79-1144, (DDC March, 1980) at page 37.

ORDER

It is hereby ordered by the Board:

1. The Board will not condition approval of the notice of intent to mine as issued in this matter upon the operators' compliance with the Emery County Zoning Ordinance, however, nothing in this order shall relieve the operator of the responsibility of complying with other applicable statutes and ordinances under state and local law.

2. Evidence has demonstrated that no material damage to the hydrologic balance will be caused by the approval of the proposed notice of intent to mine.


3. The Board lacks jurisdiction to condition approval of the proposed notice of intent to mine upon an agreement between the parties with respect to replacement of the water supply.

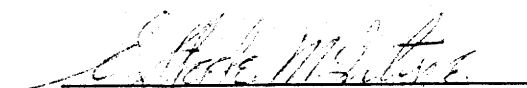
4. Therefore it is hereby ordered that the notice of intent to mine and reclamation plan submitted by Co-Op Mining Company for the Bear Creek Canyon Portal in Township 16 South, Range 7 East, SLBM, Emery County, Utah, is approved conditional upon the Divisions' receipt of an adequate bond for said mining operations.

SO ORDERED this 18th day of June, 1980, by the Board of Oil, Gas and Mining.


Charles R. Henderson

Approved by:

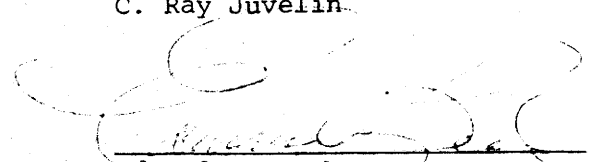

Cleon B. Feight
Hearing Examiner


E. Steele McIntyre

Thadis W. Box

C. Ray Juvelin and Edward T. Beck, Board Members, reviewed the transcripts and exhibits of this proceeding and being fully advised in the premises, are in accord with the action herein taken.

C. Ray Juvelin


Edward T. Beck